

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

GENE LEMAY BARRIS,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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No. 1:18-CV-00077 JAR

MEMORANDUM AND ORDER

The Court is in receipt of a letter from Movant addressed to the Court in which Petitioner appears to raise additional grounds for relief and directs several requests directly to the Court. (Doc. 22.) The Court will construe Movant's letter as a new Motion for Leave to Amend and will grant it with instructions to file a third amended § 2255 Motion.

Procedural Background

Movant filed a hand-written, two-page § 2255 Motion to Vacate on April 2, 2018, in which he raised a number of instances of ineffective assistance of trial counsel. (Doc. 1.) The Court ordered Movant to file an amended motion on a court-provided form. (Doc. 2.) Movant did so on March 7, 2018. (Doc. 5.) On July 2, 2018, Movant filed an "addendum," in which he sought to supplement his motion with new instances of ineffective assistance. (Doc. 7.) The Court construed Movant's addendum as a request to amend his 2255 Motion to Vacate and granted it. (Doc. 15.) Then, on April 8, 2019, Movant filed this letter. (Doc. 22.) The Court once again construes the filing as a request to amend his 2255 Motion to Vacate.

When a party has already amended his pleadings once, he may not do so again without obtaining either the other party's consent or the court's leave. Fed. R. Civ. P. 15(a)(2), 28

U.S.C. § 2244. Rule 15 states that leave should freely be given when justice so requires. “[A]mendments seeking to add claims are to be granted more freely than amendments adding parties.” *Union Pacific R. Co. v. Nevada Power Co.*, 950 F.2d 1429, 1432 (9th Cir. 1991). The Court notes that Respondent has already answered Movant’s amended motion but concludes that allowing Movant to file a third amended motion would be in the interests of justice.


Movant shall have forty-five (45) days from the date of this Order to file his third amended Motion to Vacate. Plaintiff is warned that the filing of the third amended motion **completely replaces** the original and amended motions, and claims that are not re-alleged are deemed abandoned. *E.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005). The Court will not grant any future request to amend. If plaintiff fails to file his third amended motion within forty-five (45) days, the Court may dismiss this action without prejudice.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff’s construed Motion for Leave to Amend (Doc. 22), is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff shall file a third amended motion, in accordance with the instructions set forth above, **no later than forty-five (45) days from the date of this Order.**

Dated this 9th day of April, 2019.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE